



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMno13041087

[REDACTED],
Complainant,

v.

CITY OF FORT WAYNE,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On April 17, 2013, Gilbert Anguiano ("Complainant") filed a Complaint with the Commission against City of Fort Wayne ("Respondent") alleging discrimination on the basis of national origin in violation [REDACTED]

[REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter. An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was denied employment due to his national origin. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he applied for and is qualified for the position; (3) he was denied the position; and (4) a less-qualified applicant of a different national origin was selected or the position remained open. It is evident that Complainant falls within a protected class by virtue of his Hispanic heritage. It is also evident that Complainant suffered an adverse employment action when Respondent denied Complainant a Relief Person-Facilities position on January 24, 2013. Respondent admits that Complainant was denied the position; however, evidence shows that a less-qualified American applicant was selected for the position in question.

By way of background, Complainant began working for Respondent on or about May 22, 2006 as a Relief Person in the Facilities Department. At all times relevant to the Complainant, employees "bid" for open positions pursuant to union rules and procedures. In late summer or



early fall of 2011, Complainant bid into his present position of Grounds Equipment Operator. In November 2012, evidence shows that Respondent posted a Relief Person—Facilities position and Complainant was the only individual who applied for the position. However, on or about January 24, 2013, Respondent sent Complainant a notice indicating that the Relief Person—Facilities position had been eliminated due to budgetary cuts. Nonetheless, on or about April 9, 2013, Respondent revived the opening and placed an American employee in the position as a result of a settlement stemming from a lawsuit filed several months prior. The settlement, entered into by Respondent and an aggrieved American employee, required Respondent to award the Relief Person—Facilities position to the American employee. Despite the settlement, Complainant asserts and witness testimony corroborates that the American employee was less qualified than Complainant. Although Respondent asserts that the Relief Person—Facilities position was eliminated due to budgetary cuts, this rationale is unworthy of credence as the position was revived and awarded to an American employee. While Respondent may have believed it was in a difficult situation due to the terms of the settlement, it cannot discriminate against another individual as a remedy. Thus, Respondent’s rationale appears to be pretext for unlawful discrimination on the basis of national origin and probable cause exists to believe that a discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code §22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission’s Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

March 31, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission